

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN and HELEN McGREGOR, and)	
AUTO-OWNERS INURANCE)	
COMPANY, as Subrogee of NORTH)	
ANOKA PLUMBING, on behalf of)	
themselves and all others similarly situated,)	Court No: 09 CV 1136ADM\JJK
)	
Plaintiffs,)	DEFENDANT UPONOR, INC.'S
)	MOTION TO DISMISS
vs.)	PLAINTIFFS' FIRST
)	AMENDED COMPLAINT
UPONOR, INC., successor to Uponor)	
North America, Inc., and RADIANT)	
TECHNOLOGY, INC.,)	
)	
Defendants.)	

Defendant, UPONOR, INC. ("UPONOR"), incorrectly sued as successor to Uponor North America, Inc., by and through its attorneys, JOHN R. SCHLEITER and HOWARD L. LIEBER of FISHER KANARIS, P.C., and BRADLEY D. FISHER of FOLEY MANSFIELD, PLLP., for its Motion to Dismiss Plaintiffs' First Amended Complaint, pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) states as follows:

I. ALLEGATIONS OF PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs have filed a nine count First Amended Complaint against UPONOR and Radiant Technology, Inc. ("RTI") seeking to set forth causes of action arising out of Minnesota consumer protection laws (Counts I-IV) as well as causes of action for Negligence (Count V); Negligent Failure to Warn (Count VI); Negligent

Misrepresentation (Count VII); Breach of Express Warranty (Count VIII) and Declaratory and Injunctive Relief (Count IX). Plaintiffs seek to state a purported class action on behalf of themselves and other individuals whose homes contain a plumbing system that incorporates brass insert fittings identified by an industry standard known as ASTM F1807. It is Plaintiffs' contention that the F1807 fittings are "... susceptible to premature failure through various processes like dezincification and stress corrosion cracking".

II. BASIS FOR DISMISSAL OF PLAINTIFFS' COMPLAINT

Based upon applicable law and the allegations set forth in the First Amended Complaint, UPONOR seeks dismissal of Counts I-IV and VI pursuant to Federal Rule of Civil Procedure 9(b) as a result of those counts seeking to set forth allegations of fraud, misrepresentation, "schemes" and "concealment and suppression" but not providing the requisite specificity required by Rule 9(b).

With respect to the remaining counts of the First Amended Complaint: Counts V, VII, VIII and IX, UPONOR seeks dismissal of those counts pursuant to Federal Rule of Civil Procedure 12(b)(6) as those counts fail to state claims upon which relief can be granted under applicable law. Thus Count V (the Negligence count) is subject to dismissal pursuant to the Economic Loss Doctrine; Count VII is subject to dismissal for failure to properly plead reliance and damages in connection with a Negligent Misrepresentation claim; Count VIII fails to properly plead a Breach of Warranty claim as it lacks allegations reflecting a breach of warranty and a causal connection between

such a purported breach and damages; and Count IX, seeking a Declaratory Judgment and Injunctive relief, cannot be maintained as there is an adequate remedy at law.

A detailed analysis of the allegations of the First Amended Complaint and applicable law supporting dismissal of each of the nine counts contained therein, is set forth in the Memorandum of Law contemporaneously filed by UPONOR with this Motion to Dismiss.

III. CONCLUSION

For the reasons set forth above, and in greater detail in the Memorandum of Law filed along with this Motion to Dismiss, UPONOR seeks dismissal of Counts I through IV and Count VI of Plaintiffs' First Amended Complaint pursuant to Rule 9(b) and dismissal of Counts V and VII through IX pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

WHEREFORE Defendant, UPONOR, INC. prays that this Court will grant its Motion to Dismiss Plaintiffs' First Amended Complaint for the reasons set forth above and in the Memorandum of Law, and grant such other and further relief as the Court may deem appropriate.

UPONOR, INC.

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